

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CALEB L. MCGILLVARY,

Plaintiff,

v.

RONALD RIEZ, *et al.*,

Defendants.

Civ. No. 22-6430 (MAS)(JBD)

ORDER

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**THIS MATTER** comes before the Court by way of incarcerated *pro se* plaintiff Caleb McGillvary's February 9, 2024 motion for an order compelling defendant Riez to respond to McGillvary's first request for the production of documents ("RFP") and granting McGillvary reasonable expenses and sanctions. [Dkt. 41.]

McGillvary served his first RFP on Riez on December 14, 2023. [Dkt. 41-1] at 2; [Dkt. 41-4]; [Dkt. 41-5] ¶ 2. In his motion, McGillvary asserts that some of Riez's responses, which were timely served on McGillvary on January 12, 2024, were "inadequate" because some of the documents that were produced indicate the existence of additional requested documents that were not produced. [Dkt. 41-5] ¶ 6. According to McGillvary, these additional unproduced documents include a "dental chart," an "xray," a record of a "last exam" on 6/26/19, a record of an

“nv exam,” a record of a “last cleaning” on 6/26/19, a “panorex,” and a “radiograph panorex.” [Dkt. 41-1] at 2-3; [Dkt. 41-5] ¶ 6.<sup>1</sup>

McGillvary asserts that he contacted counsel for Riez by telephone on January 17, 2024 “through her designated agent ‘Matt,’” to ask counsel if she would “seek relief from the consequences resulting from the failure to file a timely response, or whether [] [Riez] would comply with the [r]equest after seeking a motion to extend time.” [Dkt. 41-5] ¶ 7. McGillvary asserts that Riez’s counsel promised to “get back to [him]” but has not yet responded. *Id.* McGillvary states that he then sent a letter to Riez’s counsel on January 18, 2024 “reiterating the requests [he] made” in the January 17, 2024 telephone conversation. *Id.* ¶ 8. McGillvary asserts that he has received no response to this letter, and thus seeks an order requiring Riez to produce these documents by February 28, 2024. *Id.*; [Dkt. 41-1] at 3. McGillvary also requests reasonable expenses and further sanctions as appropriate. [Dkt. 41] at 2.

After carefully considering McGillvary’s motion and supporting documents, the Court determines that this formal motion to compel is premature, primarily because it is not clear whether McGillvary specifically requested these additional documents in the telephone conversation with, or in the letter to, Riez’s counsel. Although McGillvary states that he has attached the letter as Exhibit D, there is no Exhibit D or letter contained in his motion. Thus, the Court will instead consider

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<sup>1</sup> Although McGillvary asserts that Riez’s response to his first RFP is attached to the motion as Exhibit C, [Dkt. 41-5] ¶ 6, only the first two pages of conditions and general objections have been included. *See* [Dkt. 41-4].

McGillvary's motion to be a supplemental request for the production of the documents listed in McGillvary's declaration.

Accordingly, for the above reasons,

**IT IS** on this **15th day of February, 2024**,

**ORDERED** that McGillvary's motion to compel [Dkt. 41] is DENIED without prejudice; and it is further

**ORDERED** that McGillvary's motion to compel [Dkt. 41] is deemed to be a supplemental request for the production of the documents described in McGillvary's declaration at [Dkt. 41-5] ¶ 6, and is considered served on Riez as of the date of this Order; and it is further

**ORDERED** that Riez shall serve any objections and responses to McGillvary's supplemental request for the production of the documents described in McGillvary's declaration at [Dkt. 41-5] ¶ 6 by February 29, 2024; and it is further

**ORDERED** that, pursuant to Local Civil Rule 37.1(b)(1), if McGillvary has any additional supplemental written discovery requests or finds Riez's responses deficient, he should first write to Riez's counsel directly, specifically describing any asserted deficiencies, and give Riez's counsel a reasonable time to respond, before bringing it to the attention of the Court in a motion to compel; and it is further

**ORDERED** that if Riez does not sufficiently respond to the present supplemental request for production of documents by February 29, 2024, and McGillvary and Riez's counsel cannot resolve any disagreements as described in the preceding paragraph, McGillvary may refile a motion to compel; and it is further

**ORDERED** that McGillvary's request for reasonable expenses and further sanctions is **DENIED** without prejudice.

A handwritten signature in blue ink, appearing to read "JBD", with a horizontal line underneath it.

J. BRENDAN DAY  
UNITED STATES MAGISTRATE JUDGE